

DIRECTIVE

WORKFORCE INVESTMENT ACT

Number: WIAD02-9

Date: November 22, 2002
69:50:va:6372

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: WORKER DISPLACEMENT PROHIBITION

EXECUTIVE SUMMARY:

Purpose:

The purpose of this directive is to communicate federal and State policy and procedures regarding prohibitions against replacing regular employees with Workforce Investment Act (WIA) participants, and against infringing on the promotional opportunities of currently employed individuals.

Scope:

This directive applies to Local Workforce Investment Areas (LWIA) and other subrecipients of WIA funds.

Effective Date:

This directive is effective on the date of its issuance.

REFERENCES:

- WIA Section 181(b)(2) and (3)
- Title 20 of the Code of Federal Regulations (Title 20 CFR), Section 667.270
- Senate Bill 1591
- California Unemployment Insurance Code (CUIC), Section 15051(g)

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements, which are indicated in ***bold, italic type***.

FILING INSTRUCTIONS:

This directive finalizes Draft Directive WIADD-43, issued for comment on October 10, 2002. Retain this directive until further notice.

BACKGROUND:

Section 181(b)(2) of WIA sets forth the general prohibitions against displacing current employees and against impairing existing contracts for services and collective bargaining agreements.

The WIA Section 181(b)(3) contains prohibitions against replacing laid off employees with WIA participants and against using WIA participants to replace employees who have been terminated with the intent of so replacing them. These prohibitions are reiterated in the CUIA Section 15051(g), which became law with the signing by the Governor of Senate Bill 1591 on September 30, 2002. The WIA Section 181(b)(3) further prohibits infringement on the promotional opportunities of currently employed workers.

The CUIA Section 15051(g) adds a prohibition against replacing laid off regular seasonal employees in the construction industry with WIA participants. The effective date of this new prohibition is January 1, 2003.

Title 20 CFR Section 667.270(a) through (c) contains further information and clarification regarding federal requirements for ensuring that WIA participants do not displace other employees. Section 667.270(d) provides that regular employees and participants alleging displacement may file a complaint under applicable WIA grievance procedures.

POLICY AND PROCEDURES:

As required by WIA Section 181(b)(2)(A) and Title 20 CFR Section 667.270(a), participants in programs and activities authorized under WIA Title I may not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of participation).

The WIA Section 181(b)(2)(B) and Title 20 CFR Section 667.270(b) prohibit the impairment of existing contracts for services or collective bargaining agreements. When a program or activity authorized under WIA Title I would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

As required by WIA Section 181(b)(3) and Title 20 CFR Section 667.270(c), a WIA participant shall not be employed in a job if:

- Any other individual is on layoff from the same or any substantially equivalent job; or
- The employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant; or
- The job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals (as of the date of participation).

As required by CUIC Section 15051(g)(3), no participant shall be employed and no job opening shall be filled when the employer has not rehired a seasonal employee who has a history of regular seasonal employment with employers. This shall only apply to seasonal employment in the construction industry. The effective date of this prohibition is January 1, 2003.

The WIA, the federal regulations, and the CUIC do not define the term “regular employee” as it pertains to the general WIA non-displacement prohibitions or as it pertains specifically to construction workers under CUIC Section 15051(g)(3). However, it is the clear intent of WIA Section 181(b)(2)(A) that WIA participants shall not displace or in any way reduce the hours of non-overtime work, wages, or benefits of *any* current employee, which could include part time employees and temporary employees whose contracted term of employment has not ended. Furthermore, WIA Section 181(b)(3)(B) states that WIA participants may not be employed with an employer if that employer has reduced the workforce with the intent of filling the vacancies with the WIA participants.

The term “seasonal” as it relates to regular construction industry employees is also not defined by the CUIC. In defining or interpreting this term, local areas should consult with private sector representatives (and in particular, construction industry representatives) and labor representatives on their Local Workforce Investment Boards (LWIB), as well as other applicable industry and employee representatives. Items to consider could include employment that is not year-round and employment that has a greater need for employees during certain peak periods of the year.

Title 20 CFR Section 667.270(d) states that regular employees and WIA participants alleging displacement may file a complaint under the applicable grievance procedures found in WIA Section 181(c) and Title 20 CFR Section 667.600.

As a part of their oversight responsibilities, LWIBs are responsible for ensuring that there is a system in place that facilitates compliance with the above described non-displacement prohibitions in WIA, its associated regulations, and the CUIC.

ACTION:

Please bring this directive to the attention of all relevant individuals in the LWIA.

INQUIRIES:

If you have any questions, please contact your [Regional Advisor](#) at (916) 653-6347.

/S/ BOB HERMSMEIER
Acting Chief
Workforce Investment Division